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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 LAWRENCE CHRISTOPHER SMITH,

12 Petitioner,

13 v.

14 KEN CLARK,

15 Respondent.
16

No. 1:21-cv-01346 JLT EPG (HC)

ORDER DENYING PETITIONER'S
MOTION TO BE RELIEVED OF
RULING/JUDGMENT

(Doc. 29)

17 Lawrence Christopher Smith is a state prisoner proceeding *pro se* with a petition for writ
18 of habeas corpus brought pursuant to 28 U.S.C. § 2254. Petitioner now seeks relief from
19 judgment pursuant to Federal Rule of Civil Procedure 60(b)(3). (Doc. 29.)

20 **I. BACKGROUND**

21 Petitioner was charged with several crimes arising out of four incidents that occurred
22 while he was an inmate at Corcoran State Prison. *People v. Smith*, No. F076167, 2020 WL
23 2520062, at *1 (Cal. Ct. App. May 18, 2020). On July 5, 2017, Petitioner was convicted by a jury
24 in the Kern County Superior Court of three counts of obstructing/resisting an executive officer
25 (counts 1, 3, 6); aggravated battery on a state prison officer (count 2); two counts of being a
26 prisoner in possession of a weapon (counts 4, 7); and manufacturing a sharp instrument while in
27 prison (count 5). (7 CT¹ 1838–51.) On August 2, 2017, Petitioner was sentenced to six

28 ¹ “CT” refers to the Clerk’s Transcript on Appeal lodged by Respondent. (Doc. 12.)

1 consecutive imprisonment terms of twenty-five years to life on counts 1, 2, 3, 4, 6, and 7. The
2 court stayed execution of the twenty-five years to life term as to count 5. (7 CT 1911–13.)

3 On May 18, 2020, the California Court of Appeal, Fifth Appellate District, conditionally
4 reversed the judgment and directed the trial court to disclose to Petitioner certain information
5 pertaining to two internal affairs investigations and to give Petitioner “a reasonable opportunity to
6 investigate the disclosed material and determine whether it would have led to any relevant and
7 admissible evidence he could have presented at trial.” *Smith*, 2020 WL 2520062, at *18. “If
8 [Petitioner] can demonstrate a reasonable probability of a different outcome had the evidence
9 been disclosed, the trial court must order a new trial. If [Petitioner] cannot, the judgment is to be
10 reinstated.” *Id.* In all other respects, the judgment was affirmed. *Id.* On August 12, 2020, the
11 California Supreme Court denied Petitioner’s petition for review. (LDs² 2 5, 6.) On April 30,
12 2021, Petitioner elected not to pursue a motion for new trial and requested that the judgment be
13 reinstated. (LD 7.) Subsequently, Petitioner filed multiple state habeas petitions, which were all
14 denied. (LDs 8–15.)

15 Petitioner filed a federal habeas petition, raising the following claims: (1) unreasonable
16 search and seizure; (2) false evidence; (3) judicial bias; and (4) selective prosecution. (Doc 1.)
17 Respondent filed an answer, and Petitioner filed a traverse and supplemental traverse. (Docs. 11,
18 21, 22.) On October 12, 2022, the magistrate judge issued Findings and Recommendations,
19 recommending that the petition be denied. (Doc. 23.) On October 27, 2022, Petitioner filed
20 objections and moved to amend the petition. (Doc. 24.) That same day, Petitioner lodged an
21 amended petition. (Doc. 25.) On December 13, 2022, the Court denied Petitioner’s motion to
22 amend, adopted the Findings and Recommendations, and denied the petition. (Doc. 27.) Judgment
23 was entered the same day. (Doc. 28.)

24 On January 6, 2023, Petitioner filed the motion for relief from judgment pursuant to
25 Federal Rule of Civil Procedure 60(b)(3), which is now pending before the Court. (Doc. 29.) On
26 January 12, 2023, Respondent filed a response. (Doc. 30.)

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28 ² “LD” refers to the documents lodged by Respondent. (Doc. 12.)

1 **II. LEGAL STANDARD**

2 Rule 60(b) of the Federal Rules of Civil Procedure provides:

3 On motion and just terms, the court may relieve a party or its legal representative
4 from a final judgment, order, or proceeding for the following reasons:

5 (1) mistake, inadvertence, surprise, or excusable neglect;

6 (2) newly discovered evidence that, with reasonable diligence, could not
have been discovered in time to move for a new trial under Rule 59(b);

7 (3) fraud (whether previously called intrinsic or extrinsic)
8 misrepresentation, or misconduct by an opposing party;

9 (4) the judgment is void;

10 (5) the judgment has been satisfied, released, or discharged; it is based on
an earlier judgment that has been reversed or vacated; or applying it
11 prospectively is no longer equitable; or

12 (6) any other reason that justifies relief.

13 Fed. R. Civ. P. 60(b).

14 Petitioner moves for relief from judgment pursuant to Rule 60(b)(3), which “permits a
15 losing party to move for relief from judgment on the basis of fraud, misrepresentation, or other
16 misconduct of an adverse party.” *Trendsetta USA, Inc. v. Swisher Int’l, Inc.*, 31 F.4th 1124, 1136
17 (9th Cir.) (citation, internal quotation marks omitted), *cert. denied*, 143 S. Ct. 486 (2022). “To
18 prevail, the moving party must prove by clear and convincing evidence that the verdict was
19 obtained through fraud, misrepresentation, or other misconduct and the conduct complained of
20 prevented the losing party from fully and fairly presenting the defense.” *Id.* (citation and internal
21 quotation marks omitted). “Rule 60(b)(3) is aimed at judgments which were unfairly obtained, not
22 at those which are factually incorrect . . .” *Id.* (citation and internal quotation marks omitted).

23 **III. DISCUSSION**

24 In the instant matter, Petitioner challenged his 2017 Kern County convictions for crimes
25 he committed while incarcerated. (Doc. 1.) In another pending habeas petition filed in this Court,
26 Petitioner challenges his 2021 Kings County convictions for crimes he committed while
27 incarcerated. (Petition, *Smith v. Clark*, No. 1:21-cv-01554-AWI-EPG, Doc. 1.) Petitioner alleges
28 that on or around November 17, 2022, prison staff held an envelope earmarked for the Court’s

1 attention for 27 days, supposedly on the basis of insufficient postage. Petitioner contends that the
2 timing of the prison staff's action in holding the envelope for 27 days, in addition to the
3 opposition of the motion to amend the sister petition and the allegations in the motion for
4 contempt proceedings³ in Case No. 1:21-cv-01554-AWI-EPG, support Petitioner's "position that
5 the Courts dismissal of the Petition was a finding which the Respondent fraudulently obtained."
6 (Doc. 29 at 2.)

7 The Court finds that Petitioner has not established by clear and convincing evidence that
8 the judgment was obtained through fraud, misrepresentation, or other misconduct or that the
9 conduct complained of prevented Petitioner from fully and fairly presenting his case. The three
10 documents contained in the envelope that held by prison were: (1) a motion to consolidate
11 petitions (Case No. 1:21-cv-1554-AWI-EPG); (2) a proposed traverse (Case No. 1:21-cv-1346-
12 JLT-EPG); and (3) a motion to withdraw pleadings (both cases). (Doc. 29 at 2.) The Court notes
13 the proposed traverse appears to have been filed on November 21, 2022. (*Compare* Doc. 29 at 8–
14 42 *with* Doc. 26.) Notably, Petitioner had previously filed a traverse and supplemental traverse,
15 (Docs. 21, 22), which were considered by the Court, (Doc. 23 at 2), and the Court had not
16 authorized the filing of a second supplemental traverse. In the motion to withdraw pleadings,
17 Petitioner sought to withdraw his prior motion to amend asserting "the proper course of action for
18 [Petitioner] to have taken is to have sought to consolidate the current petition(s) [Petitioner has]
19 before the Court and ... then filing a reply to the Respondent's answers in one pleading[.]" (Doc.
20 29 at 7.) However, "[a] petitioner who seeks relief from judgments of more than one state court
21 must file a separate petition covering the judgment or judgments of each court." Rule 2(e), Rules
22 Governing Section 2254 Cases in the United States District Courts ("Habeas Rules"), 28 U.S.C.
23 foll. § 2254. *See Bianchi v. Blodgett*, 925 F.2d 305, 308 (9th Cir. 1991) (citing an earlier version
24 of the Habeas Rules).

25 Because Petitioner was not authorized to file a second supplemental traverse and
26 consolidation would not be permitted under the Habeas Rules, the Court finds the prison staff's

27 ³ In the motion, Petitioner appears to take issue with the manner in which Respondent lodged the state court record in
28 Case No. 1:21-cv-01554AWI-EPG. Petitioner also makes wide-ranging allegations regarding an alleged conspiracy
against him involving various officials and complains of discovery issues in state court.

1 action in holding the envelope for 27 days⁴ did not prevent Petitioner from fully and fairly
2 presenting his case. Accordingly, Petitioner is not entitled to relief under Rule 60(b)(3), and the
3 motion is denied.

4 **IV. CERTIFICATE OF APPEALABILITY**

5 A state prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a
6 district court's denial of relief, and an appeal is only allowed in certain circumstances. *Miller-El*
7 *v. Cockrell*, 537 U.S. 322, 335–36 (2003); 28 U.S.C. § 2253. In *United States v. Winkles*, 795
8 F.3d 1134 (9th Cir. 2015), the Ninth Circuit held a certificate of appealability “is required to
9 appeal the denial of a Rule 60(b) motion for relief from judgment arising out of the denial of a
10 section 2255 motion.” *Id.*, 795 F.3d at 1142. If a court denies a Rule 60(b) motion in a § 2255
11 proceeding, a certificate of appealability should only issue if “(1) jurists of reason would find it
12 debatable whether the district court abused its discretion in denying the Rule 60(b) motion and (2)
13 jurists of reason would find it debatable whether the underlying section 2255 motion states a valid
14 claim of the denial of a constitutional right.” *Winkles*, 795 F.3d at 1143. “Given that section 2255
15 ‘was intended to mirror § 2254 in operative effect,’ and that the language used in sections
16 2253(c)(1)(A) and (c)(1)(B) is functionally identical,” *id.* at 1141 (citations omitted), the Court
17 applies the standard set forth in *Winkles* to determine whether a certificate of appealability should
18 issue regarding the denial of Petitioner's Rule 60(b) motion for relief from judgment arising out
19 of the denial of his § 2254 petition. *See Payton v. Davis*, 906 F.3d 812, 818 n.8 (9th Cir. 2018)
20 (recognizing that the analysis in *Winkles* applies to a motion for relief from judgment arising from
21 the denial of a § 2254 petition).

22 The Court finds that jurists of reason would not find it debatable whether the Court abused
23 its discretion in denying the Rule 60(b) motion for relief from judgment. Therefore, the Court
24 declines to issue a certificate of appealability.

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28 ⁴ The Court also notes that such action does not appear to constitute fraud, misrepresentation, or other misconduct.

1 **V. ORDER**

2 Based upon the foregoing, the Court **ORDERS**:

- 3 1. Petitioner's motion to be relieved of ruling/judgment (Doc. 29) is **DENIED**.
4 2. The Court declines to issue a certificate of appealability.

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6 IT IS SO ORDERED.

7 Dated: **March 23, 2023**


UNITED STATES DISTRICT JUDGE